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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/526,187

10/25/2005

Eduardo Anitua Aldecoa

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BROWDY AND NEIMARK, P.L.L.C.
624 NINTH STREET, NW
SUITE 300
WASHINGTON, DC 20001-5303

EXAMINER

BUMGARNER, MELBA N

ART UNIT

PAPER NUMBER

3732

MAIL DATE

DELIVERY MODE

11/15/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/526,187

Applicant(s)

ANITUA ALDECOA, EDUARDO

Examiner

Melba Bumgarner

Art Unit

3732

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 August 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|-------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>2/9/06</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Applicant's election with traverse of Invention I, claims 1-9 in the reply filed on August 29, 2007 is acknowledged. Applicant has amended claims 10-17 to read upon the elected invention; therefore, claims 10-17 will not be withdrawn.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 3-17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Recitation of "the polygonal section", "the O-ring seal" in claim 3, "the connector" in claims 4, 5, 7, 8, "the osteotome" in claim 10 lack sufficient antecedent basis. Claims 6 and 9 provides for the use of the set of motor-driven instruments, but, since the claim does not set forth any steps involved in the method/process, it is unclear what method/process applicant is intending to encompass. A claim is indefinite where it merely recites a use without any active, positive steps delimiting how this use is actually practiced.

4. Claims 6 and 9 are rejected under 35 U.S.C. 101 because the claimed recitation of a use, without setting forth any steps involved in the process, results in an improper definition of a process, i.e., results in a claim which is not a proper process claim under 35 U.S.C. 101. See for example *Ex parte Dunki*, 153 USPQ 678 (Bd.App. 1967) and *Clinical Products, Ltd. v. Brenner*, 255 F. Supp. 131, 149 USPQ 475 (D.D.C. 1966).

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1, 9, 10, and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lorenzi (2002/0094508) in view of Strong et al. (2002/0172923). Lorenzi discloses a set of motor-driven instruments comprising osteotomes of progressive diameters, the osteotomes having an apical end, threaded conical section and a threaded cylindrical section, and an adjustment area (figure 1), two drills of different diameters comprising ends for connection to a surgical motor (figure 2), and connectors [0013]; however, Lorenzi does not show starter drill. Strong et al. teach a set of dental instruments comprising a starter drill [0011] that is smaller in section than the osteotomes comprising an end for connection to a surgical motor. It would have been obvious to one having ordinary skill in the art at the time the invention was made to include a starter drill as in Strong et al. to make an initial hole to prepare the implant site in view of Strong et al. The starter drill [0013] of Strong et al. comprises a standard dental drill and do not show specific shape of a section of the drill. It would have been obvious to one of ordinary skill in the art as to the specific shape of the section end of a standard dental drill and the shape of the section is not critical to the claimed set.

7. Claims 3-8, 13, 15, and 16 are rejected under 35 U.S.C. 103 (a) as being unpatentable over Lorenzi in view of Strong et al. and further in view of Misch et al. (6,068,480). The modified set of instruments of Lorenzi and Strong et al. shows the limitations as described

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above; however, they do not show the connectors comprising a blind axial recess. Misch et al. teach instrument for fixing dental implants comprising connector having an end comprising a blind axial recess with a polygonal section incorporating the o-ring seal (figure 5). It would have been obvious to one having ordinary skill in the art to further include the features of Misch et al. in the set of instruments in order to connect the working part of the instrument to a driving part. Misch et al. show embodiments of motor-driven and manual-driven connector ends comprising an extension or coupling area.

8. Claims 2, 11, 12, and 14 are rejected under 35 U.S.C. 103 (a) as being unpatentable over Lorenzi in view of Strong et al. and further in view of Lazzara et al. (6,290,499). The modified set of instruments of Lorenzi and Strong et al. shows the limitations as described above and Lorenzi discloses adjustment area comprising a polygonal-section projection; however, they do not show the cylindrical projection section. Lazzara et al. teach instrument for fixing dental implants comprising dental component having an end capped by a cylindrical projecting section creating a circular recess 132 in which an O-ring seal 168 is housed. It would have been obvious to one having ordinary skill in the art to further modify the adjustment area to have the section of Lazzara et al. in order to secure components of the instruments. It would have been an obvious matter of choice to one of ordinary skill in the art to have a polygonal projection that is hexagonal instead of quadrilateral.

Conclusion

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Danger is cited to show the state of the art with respect to a dental drill with quadrangular section end.

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10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melba Bumgarner whose telephone number is 571-272-4709.

The examiner can normally be reached on Mon-Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cris Rodriguez can be reached at 571-272-4964. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Melba Bumgarner
Primary Examiner